

Southern Pacific Transportation Company

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3-234A025

RECORDED NO. 8812-5 FILED 1983

AUG 22 1983 - 10 20 AM

INTERSTATE COMMERCE COMMISSION

August 18, 1983

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Twelfth Street & Constitution Avenue
Washington, D.C. 20423

No. **AUG 22 1983**
Date
Fee \$ 50.00
ICC Washington, D.C.

RE: Agreement of Conditional Sale dated as of
May 1, 1977, between Southern Pacific
Transportation Company, First Pennsylvania
Bank, N.A., and ACF Industries, Incorporated

Dear Ms. Mergenovich:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the original and three (3) counterparts of Car Lease Agreement dated June 10, 1983, between Southern Pacific Transportation Company and Consolidated Rail Corporation, amending the above-entitled Agreement of Conditional Sale and Agreement and Assignment dated as of May 1, 1977, together with this Company's voucher in payment of the recording fee.

The following documents have been recorded with the Commission under Section 11303 in this matter:

Agreement of Conditional Sale dated as of May 1, 1977, between ACF Industries, Incorporated, Portec, Inc. (Paragon Division), PACCAR, Inc., and Southern Pacific Transportation Company, recorded on May 5, 1977, at 12:35 PM, assigned Recordation No. 8812;

Amendment Agreement dated as of July 30, 1978, recorded on January 23, 1980, at 2:50 PM, assigned Recordation No. 8812-A;

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OPERATION SR.

C. Cunningham
Shirley B. Everett

Ms. Agatha L. Mergenovich
Page Two
August 18, 1983

First Supplemental Agreement dated as of September 30, 1981, between Southern Pacific Transportation Company, First Pennsylvania Bank, N.A., and ACF Industries, Incorporated, recorded on October 1, 1981, assigned Recordation No. 8812-B;

First Supplemental Agreement dated as of September 30, 1981, between Southern Pacific Transportation Company, First Pennsylvania Bank, N.A., and Portec, Inc., recorded on October 1, 1981, assigned Recordation No. 8812-C; and

First Supplemental Agreement dated as of September 30, 1981, between Southern Pacific Transportation Company, First Pennsylvania Bank, N.A., and PACCAR, Inc., recorded on October 1, 1981, assigned Recordation No. 8812-D.

In connection with the recording of the enclosed Car Lease Agreement dated June 10, 1983, the following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 27, 1952, as amended:

Car Lease Agreement dated June 10, 1983, between Southern Pacific Transportation Company, Vendee, and First Pennsylvania Bank, N.A., Assignee.

General Description of Equipment Covered By
Car Lease Agreement

<u>Number of</u> <u>Units</u>	<u>Description</u>
25	89' 4" 70-ton flat cars; ACF Industries, Inc., builder; lettered SP and numbered 516273 through 516972.

When the recording of the Car Lease Agreement has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative herewith, and return the remainder of the same to her.

Very truly yours,

Madeleine E. Sloane
Madeleine E. Sloane

Enclosures

Ms. Agatha L. Mergenovich
Page Three
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cc: Mr. Robert J. McLean
 (Attn: Mr. L. S. Vollmer)
 Mr. J. J. Trabucco
 Mr. J. K. Wyma

CAR LEASE AGREEMENT

THIS AGREEMENT, made this 10th day of June, 1983, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SP") and CONSOLIDATED RAIL CORPORATION ("CR");

ASSOCIATION NO. 8812-E FILED 1983

RECITALS:

AUG 22 1983 - 10 20 AM

SP has entered into certain Conditional Sale Agreements with First Pennsylvania Bank as trustee, dated April 1, 1976 and May 1, 1977 (hereinafter collectively referred to as "Sale Agreements"). SP has covenanted pursuant to said Sale Agreements that it shall not without the written consent of the Trustee first had and obtained, assign or transfer its rights thereunder, sell or transfer or otherwise dispose of the trust equipment or any part thereof.

Upon receipt of such consent and in consideration of the mutual promises, covenants and agreements hereinafter set forth, SP hereby agrees to lease certain railroad equipment to CR and CR agrees to ~~sub~~lease said railroad equipment from SP upon the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

1. SP agrees to furnish to CR and CR agrees to lease from SP upon the terms and conditions set forth herein, seventy five (75) tri-level automobile transport rail cars of the reporting marks, type, construction and other description as set forth in Exhibit A, attached and hereby made a part hereof. The above-described railcars are hereafter collectively called "Cars" and hereinafter individually called "Car."

CR acknowledges that it is in receipt of copies of the above-mentioned Sale Agreements and CR agrees in accordance with the terms and conditions thereof, this Agreement by and between SP and CR shall be made expressly subject and subordinate to all of the provisions of said Sale Agreements and the rights and remedies of the Trustee thereunder.

2. The term of this Agreement shall commence as to each Car upon the signing by both parties of a joint inspection certificate as to such Car and unless sooner terminated in accordance with the terms and conditions hereof, shall continue until August 31, 1984. Provided no earlier termination has occurred, this Agreement shall thereafter be automatically renewed for one (1) year terms unless any party notifies the other parties in writing of its desire to terminate this Agreement not less than ninety (90) days before the expiration of the initial or extended term as the case may be.

3. Upon execution hereof, CR shall advance to SP a deposit of Seventy Five Thousand Dollars (\$75,000) (hereinafter referred to as

"Deposit") to cover SP's cost of repairing said Cars and placing them in a condition suitable for interchange in accordance with the Interchange Rules of the Association of American Railroads ("AAR Rules"). Said Deposit shall be refunded to CR in the manner set forth in Section 7 hereof.

4. Each Car shall be inspected by representatives of both SP and CR at a designated place on the lines of SP or its subsidiaries that is mutually acceptable to both CR and SP. Said representatives shall prepare and execute for each Car, a joint inspection certificate ("JIC") as used under Rule 103 of the AAR Rules. Each Car found following inspection to be in mechanical and safety compliance with all applicable AAR and Federal Railway Association ("FRA") Rules and Specifications and otherwise meeting the description specification contained in the attached Exhibit A, shall be accepted for all purposes of this Agreement by the execution by both representatives of SP and CR of the JIC, so noting the acceptance. Any Car not meeting the standards set forth in the preceding sentence may be rejected by CR and such objection shall be set forth in the JIC and thereupon SP shall have the option to a) cure such defect, or b) substitute such Car with a suitable replacement. If SP is unable to provide a sufficient number of substitute Cars, CR shall have the option and sole remedy to a) terminate this Agreement in its entirety, or b) reduce the number of Cars covered under this Agreement by the number of rejected Cars of which SP does not have suitable substitutes.

SP shall deliver the Cars to CR as promptly as is reasonably possible at East St. Louis, Illinois, following receipt of said Deposit and completion of repairs. Delivery with respect to a Car shall be deemed to have taken place on the date that such Car is interchanged to CR at East St. Louis, Illinois. The parties agree that all Cars delivered to CR hereunder shall retain the railroad reporting marks of SP throughout the entire term or any extended term of this Agreement.

5. CR at its sole expense shall make all additions or modifications to the Cars as necessary to comply with the requirements of the type of service intended for said Cars by the parties, including but not limited to installing full door enclosures or furnishing additional tie-down devices. All such additions or modifications shall be subject to the prior approval of SP and shall comply with all applicable AAR Rules and Regulations.

If requested, SP agrees at CR's sole expense, to perform on behalf of CR all such additions or modifications necessary for the Cars, provided, however, CR advances to SP the cost thereof prior to commencement of any work.

Within sixty (60) days following the expiration or termination of this Agreement, CR, at its sole expense and at SP's option, shall remove all additions or modifications made to said Cars during the term hereof, except for end door extensions and thereafter repair all holes, gouges and other structural changes created by such additions or modifications, reinstall any devices which were removed from the Cars in order to complete such additions or modifications and otherwise return the Cars to the condition in which they existed upon delivery hereunder, less normal wear and tear.

If SP does not request CR to remove all additions or modifications as set forth above, CR shall return to SP all devices which were removed from the Cars in order to first install such additions or modifications.

All additions or modifications remaining on the Cars at SP's option shall thereafter become the sole property and responsibility of SP.

6. EXCEPT AS ELSEWHERE PROVIDED IN THIS AGREEMENT, SP MAKES NO WARRANTY OR REPRESENTATION EITHER EXPRESSED OR IMPLIED AS TO THE DESIGN, OPERATION OR CONDITION OF OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE CARS DELIVERED TO CR HEREUNDER AND SP MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS AS BETWEEN SP AND CR ARE TO BE BORNE BY CR AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES OF SP ARE HEREBY WAIVED BY CR. SP SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER.

7. In consideration of the rights and obligations hereunder, the parties agree that SP shall be entitled to receive all Car Hire payments which accrue to the Cars while moving over railroad lines not owned by SP during the period this Agreement remains in effect.

SP shall notify CR in writing, at such time as the total Car Hire payments received by SP on said Cars equals the Deposit set forth in Section 3 hereof. SP shall promptly following receipt of a special reclaim from CR pursuant to this Agreement, refund to CR through car hire credits, the total amount of said Deposit.

Except for the reclaim to recover the Deposit as set forth in the preceding paragraph CR shall not be entitled to submit to SP for payment nor will SP be required to honor any reclaims of any sort by CR including but not limited to Car Hire Rule 22 reclaims against the Cars which are subject to this Agreement.

If at any time during the initial term or extended term of this Agreement, the Car Hire rules in effect upon the commencement date hereof, are abandoned or suspended by the ICC, CR agrees to begin making monthly payments to SP of an amount equal to Seven Hundred Fifty Dollars (\$750.00) per month for each Car covered under this Agreement.

8. Except for the payment of any amounts due hereunder, neither party to this Agreement shall be liable for nonperformance or delay in their performance due to any cause not within its control ("force majeure"). Force majeure will include without limitation, acts of God, legislation or regulations of any governmental body, court decrees, acts of public enemy, riots, strikes, labor disputes, labor or material shortages, fire, explosions, floods, derailments and breakdown of or damage to plants, equipment or facilities or if affected by force majeure the party so affected will give notice to the other party hereto as promptly as possible of the nature and probable duration of such force majeure. If, because of force majeure, either party hereto is unable to carry out its obligations under this Agreement, either party

may cancel agreement upon one (1) day written notice.

9. Repairs not covered by the Office Manual of the Interchange Rules, Appendix B, Code of Rules Governing Procedures for Operating and Billing Maintenance Pools will be assumed by SP.

Settlement for Cars which are determined to be lost, destroyed or damaged beyond repair in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight, and any other applicable AAR Rules.

Effective on the date SP receives notice that a Car has been lost, damaged or destroyed, such Car shall no longer be subject to the terms and conditions of this Agreement.

10. CR shall not directly or indirectly create or incur any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Cars, or any interest therein or in this Agreement. CR will promptly at its expense take such action as may be necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or other security interest claim if the same shall arise at any time while this Agreement remains in effect.

11. The occurrence of any of the following events shall be an event of default:

- a) the nonpayment by CR of any sums required herein to be paid by CR within thirty (30) days after the date any such payment is due;
- b) the breach of either party of any other term, covenant or condition of this Agreement which is not cured within ten (10) days after notice from the nondefaulting party of such breach. Commencement of a cure for the breach shall be equivalent to a cure, provided such cure is diligently pursued;
- c) any act or insolvency or the filing of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law or laws for the relief of or relating to debtors of either party;
- d) the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against either party that is not dismissed within sixty (60) days thereafter or the appointment of any receiver or trustee to take possession of the properties of either party unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment;

Upon the occurrence of any event of default hereunder without limiting the nondefaulting party's rights and remedies otherwise provided by law which shall be available in addition to the following rights and remedies (no right or remedy being exclusive, but all such rights and

remedies being available at all times and the nondefaulting party in any case being entitled to recover all costs, expenses and attorneys fees incurred in enforcing any right or remedy hereunder), the nondefaulting party may, at its option, terminate this Agreement and or may a) proceed by any lawful means to enforce performance of this Agreement or to recover damages for a breach thereof and/or b) in the event CR is the defaulting party, by notice in writing to CR, terminate CR's right of possession and use of the Cars whereupon all right and interest of CR in the Cars shall terminate; and thereupon SP may enter upon an premises where the Cars may be located and take possession of the Cars and henceforth hold possession and enjoy the same, free from any right of CR. SP shall, in addition, have the right to recover from CR any and all amounts which under the terms of this Agreement may then be due or which may have accrued to that date. The nondefaulting party shall be entitled to recover costs and expenses, including reasonable attorneys fees incurred in securing the enforcement of this Agreement and in the event of litigation, reasonable attorneys fees in the trial or any appeal therefrom.

12. CR agrees to release, defend and indemnify SP from and against any and all loss, liability, claims, costs or expense whatsoever arising from or growing out of any injury to or death of any person or loss of or damage to any property (including but not limited to the employees, contractors, subcontractors, agents, invitees and the property of each party hereto) arising out of or in any way connected with the use or operation of the Cars while on CR lines pursuant to this Agreement.

13. Upon expiration or termination hereof, CR agrees to use its best efforts to deliver or cause to be delivered the Cars to SP at mutually agreed upon points on the lines of SP. All of the terms and conditions of this Agreement shall remain in effect until all Cars have been delivered to SP.

14. Any notice from one party to the other shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States Certified Mail, postage prepaid, addressed as follows:

If to SP:

Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

If to CR:

Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, PA 19104

Either party may at any time change such address by delivering or mailing ten (10) days prior written notice of such change to the other.

15. Neither party shall transfer or assign this Agreement or any interest herein or any right granted hereunder without the written consent of the other party and such transfer or assignment without such written consent shall be absolutely void and shall at the option of the other party, terminate this Agreement. Any permitted assignment shall be binding upon and inure to the benefit of such assigns.

16.. Any provision of this Agreement prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such provision or unenforceability, but shall not invalidate or render unenforceable such provision in any other jurisdiction.

17. Waiver of any default hereunder shall not be construed as a waiver of any subsequent or continuing default. Termination of this Agreement shall not affect any liability by reason of any act, default or occurrence prior to such termination.

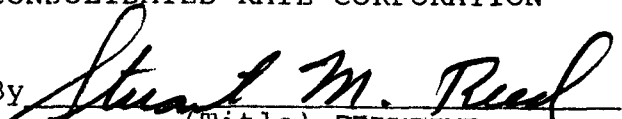
18. This Agreement represents the entire agreement. This Agreement shall not be modified, altered or amended except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By 
(Title) Assistant Manager, Contract Dept.

CONSOLIDATED RAIL CORPORATION

By 
(Title) PRESIDENT

SCHEDULE A

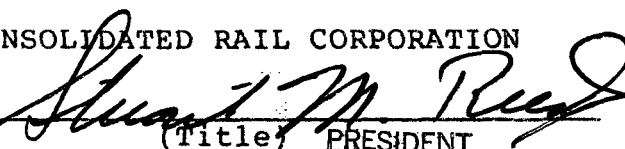
SP hereby leases the following cars to CR subject to the terms and conditions of that certain agreement dated as of _____.

<u>AAR Mechanical Design</u>	<u>Description</u>	<u>Numbers</u>	<u>Number of Cars</u>
F07078 (Whitehead & Kale)	F3E fully enclosed	Within series SP 515800 to SP 516099	50
F07080	F3E fully enclosed	SP 516273 to SP 516972	<u>25</u>
		Total	75

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By 
(Title) Assistant Manager, Contract Dept.

CONSOLIDATED RAIL CORPORATION

By 
(Title) PRESIDENT